



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 14 2013

The Honorable Randy Dorn  
Superintendent of Public Instruction  
Washington Department of Public Instruction  
P.O. Box 47200  
Olympia, WA 98504

Dear Superintendent Dorn:

I am writing in response to Washington's July 19, 2013 request to extend approval of its ESEA flexibility request through the end of the 2013–2014 school year. Currently, Washington's ESEA flexibility request is approved through the end of the 2012–2013 school year, subject to the conditions that Washington submit to the U.S. Department of Education (ED) for review and approval an amended request incorporating: (1) the final version of the new index, including by attaching to the amended request any technical documentation, administrative rules, and other relevant information; and (2) rules regarding the use of student growth as a significant factor in teacher and principal evaluation and support systems.

On March 26, 2013, I sent you a letter indicating that Washington had not yet adopted guidelines for teacher and principal evaluation and support systems that met all of the requirements of ESEA flexibility and needed to continue working to address the condition it received when approved for ESEA flexibility.

In February 2013, through Part A monitoring, ED learned that Washington will not begin using its new index in the 2013–2014 school year as it had originally planned. Rather, Washington will delay implementation of that system until the 2014–2015 school year. In the interim, Washington will continue to meet all requirements of ESEA flexibility as it did in the 2012–2013 school year by continuing to implement its transitional accountability system. As such, I have determined that the condition on Washington's ESEA flexibility request is moot. I additionally note that on February 28, 2013, Washington submitted an amended ESEA flexibility request to ED that reflects the new timeline for implementing its new index and demonstrates that Washington will continue to meet all requirements of ESEA flexibility during the 2013–2014 school year.

As a result, I am lifting this condition on the approval of Washington's ESEA flexibility request. Please note that prior to the end of the 2013–2014 school year, Washington, like other Window 1 and Window 2 States approved to implement ESEA flexibility, may request an additional extension of the waivers granted through ESEA flexibility. Please also note that this approval is not an approval of the new index that I understand Washington intends to implement in the 2014–2015 school year. In order to receive approval to implement any system of differentiated recognition, accountability, and support that differs from the system that Washington is being approved to use today through the end of the 2013–2014

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school year, Washington will be required to submit a final version of that system to ED for review and approval.

On July 19, 2013, Washington submitted an amended request intended to support extension of its approval for ESEA flexibility through the 2013–2014 school year. This request included evidence of Washington’s continued work to meet its condition to provide rules regarding the use of student growth as a significant factor in teacher and principal evaluation and support systems.

Although staff from your office provided information about how Washington intends to incorporate student growth as a significant factor in teacher and principal evaluation and support systems, ED staff learned that Washington’s interpretation of including student growth as a significant factor in educator evaluation systems is inconsistent with the *ESEA Flexibility* definition of “student growth”. Specifically, in accordance with Washington state law, a local educational agency (LEA) has discretion as to whether or not to include data from statewide assessments in determining a teacher’s student growth rating. Since Washington’s rules on the incorporation of student growth as a significant factor in teacher and principal evaluation systems do not incorporate the *ESEA Flexibility* definition of student growth, and Washington has not yet committed to requiring all LEAs to incorporate the results of statewide assessments as a measure of student growth beginning in the 2014–2015 school year, the rules that Washington submitted regarding the use of student growth as a significant factor in teacher and principal evaluation and support systems are insufficient to address this condition.

Accordingly, I have determined that Washington has failed to meet the second condition that was placed on the approval of its ESEA flexibility request. However, in its July 19 letter requesting to extend ESEA flexibility through the 2013–2014 school year, Washington committed to seeking a legislative change to ensure that Washington’s definition of “student growth” aligns with the definition described in *ESEA Flexibility*. In light of Washington’s on-going efforts to meet the condition and the ESEA flexibility requirements relevant to that condition, I am granting Washington’s request to extend approval of its ESEA flexibility request through the end of the 2013–2014 school year, subject to the condition that Washington complete the actions listed below. In addition, pursuant to the authority in 34 C.F.R. § 80.12, I am placing Washington on high-risk status.

In order to have the condition on the approval of its ESEA flexibility request lifted and its high-risk designation removed, Washington must:

- Submit to ED, no later than 30 calendar days from the date of this letter, a high-quality plan<sup>1</sup> describing Washington’s work during the 2013–2014 school year to ensure its teacher and principal evaluation systems meet the requirements of ESEA flexibility. The plan must, at a minimum, include:
  - A description of Washington’s process to seek legislative change to incorporate student growth, as defined by *ESEA Flexibility*, as a significant factor in teacher and principal evaluation systems in all LEAs throughout the State at the beginning of the 2014–2015 school year;
  - A description of how Washington will study and collect data about how student growth ratings are provided when a teacher participates as a member of a grade-level, subject matter, or other instructional team within a school, which should explain how

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<sup>1</sup> As outlined in the document titled *ESEA Flexibility*, a high-quality plan includes the following elements: key milestones and activities, detailed timeline, party or parties responsible, evidence, resources, and significant obstacles.

- Washington will ensure that the use of shared attribution of student growth does not mask the high or low performance of individual teachers; and
- Washington's plan for ensuring that LEAs will include student growth as a significant factor, in accordance with the definition included in *ESEA flexibility*, in time for LEAs to fully implement evaluation and support systems consistent with ESEA flexibility requirements in the 2014–2015 school year.
  - Following ED's Part B monitoring of Washington's ESEA flexibility implementation, which is scheduled for October 2013, provide updates to ED on a monthly basis on its progress in carrying out its high-quality plan to address the outstanding condition on the approval of its ESEA flexibility request and ensure its teacher and principal evaluation and support system meets the principles of ESEA flexibility.
  - By May 1, 2014, submit to ED an amended request that incorporates final guidelines for teacher and principal evaluation and support systems that meet the requirements of ESEA flexibility, including the use of student growth, as defined in *ESEA Flexibility*, as a significant factor in determining teacher and principal performance levels. Since under Washington state law student growth data elements may include the teacher's performance as a member of a grade-level, subject matter, or other instructional team within a school, along with the amended request, Washington must provide business rules defining these teams of teachers and explaining how student growth is calculated for a team. Washington must also provide data to demonstrate that Washington's use of shared attribution of student growth does not mask high or low performance of educators.

Please note that should Washington request renewal of its ESEA flexibility request beyond the 2013–2014 school year, ED would not be able to grant that request for renewal until the issues that resulted in Washington's continued condition and high-risk status are resolved. If those issues cannot be resolved prior to the start of the 2014–2015 school year, Washington may not be able to continue with its implementation of ESEA flexibility beyond the 2013–2014 school year.

Washington may request reconsideration of its high-risk designation by submitting in writing to me, no later than 10 business days from the date of this letter, a detailed discussion setting forth the basis for its belief that this designation is improper, including the specific facts that support its position. If Washington chooses to request such reconsideration, that request must be submitted via email to me, with a copy to Leslie Clithero, as well as by U.S. mail or commercial delivery. If I do not receive a request for reconsideration 10 business days from the date of this letter, Washington's high-risk status will be considered final and will be lifted only upon completing the actions set forth above.

Washington continues to have an affirmative responsibility to ensure that it and its districts are in compliance with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age in their implementation of ESEA flexibility, as well as their implementation of all other Federal education programs. These laws include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Age Discrimination Act of 1975, and requirements under the Individuals with Disabilities Education Act.

If you have any questions regarding this letter or the implementation of Washington's ESEA flexibility request, please not hesitate to contact Leslie Clithero of my staff at: [leslie.clithero@ed.gov](mailto:leslie.clithero@ed.gov) or (202) 260-1840. Thank you for your continued focus on enhancing education for all of Washington's children.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah S. Delisle". The signature is fluid and cursive, with the first name being the most prominent.

Deborah S. Delisle  
Assistant Secretary

cc: Gil Mendoza, Assistant Superintendent